



**The Comptroller General
of the United States**

Washington, D.C. 20548

Cunningham PL-I

Decision

Matter of: Microphor, Inc.
File: B-224264
Date: February 11, 1987

DIGEST

Contracting agency did not abuse its discretion in proceeding with award, on the basis of initial proposals, to the technically acceptable, lowest-priced offeror whose price was determined to be fair and reasonable in face of assertion made by second-low offeror 5 weeks after proposals were submitted that its competitive position had changed and it could offer a lower price representing a 7.5 percent saving. Award to low offeror was legally unobjectionable and possibility of monetary saving must be weighed against uncertainty whether it actually would be realized were competition reopened and government's interest in the timely award of a contract for the goods and services it is procuring.

DECISION

Microphor, Inc., has protested the decision of the Naval Regional Contracting Center, Long Beach, California, not to conduct discussions following its receipt of a late price modification to the timely offer which the company submitted under request for proposals (RFP) No. N00123-86-R-0838. The solicitation was for the material and services necessary to outfit 42 "clinical work spaces" (with an option for an additional 42 units) for the Fleet Hospital Support Office in Alameda, California.

The RFP provided that award would be made to "that responsible offeror proposing the lowest price for equipment meeting the requirements of the RFP" and stated that offerors should make their best offers initially as the government reserved the right to award without discussions. The "Evaluation of Options" clause also provided that, for award purposes, the Navy would evaluate prices for both the basic and option quantities involved.

038031

Four offerors, including Microphor and Grumman Houston Corporation (G-H), submitted timely offers by the closing date of August 5, 1986. In rounded terms, G-H's offer of \$1,881,000 was low; Microphor's second-low offer of \$1,902,000 was some \$21,000 higher. The Navy reports that all four proposals were then evaluated and found to be technically acceptable and that the contracting officer did not conduct discussions because he anticipated award on the basis of initial proposals to G-H as the lowest-priced, technically acceptable offeror.

On September 11, more than 5 weeks after receipt of initial offers, Microphor telephoned the Navy to ascertain whether award had yet been made, and apparently on being told that it had not, advised that it was in a position to reduce its price as a result of manufacturing economies made possible by its performance of another contract for the same items. By telegram delivered on September 12 and letter received by the Navy on September 29, Microphor offered to reduce its price by \$1,700 per unit, which when multiplied by the base plus option quantities of 84 units, equaled \$142,800. Were this price reduction to be considered in the evaluation of Microphor's offer, it would be about \$122,000 less than G-H's.

The Navy concluded that Microphor's offered price reduction was a late modification of its offer which could not be accepted under the applicable provisions of the Federal Acquisition Regulation (FAR) and implementing clauses in the RFP. The agency then proceeded on September 22 to award a contract for the base and option quantities to G-H, on the basis of its initial proposal, as the lowest and reasonably priced, technically acceptable offeror. Microphor protested to our Office upon receipt of notification of the award to G-H.

Microphor concedes that its offered price reduction was "late," if viewed as an attempted modification to its proposal, and it does not argue that it falls within any of the exceptions provided for by regulation under which late modifications to proposals may be considered for award. It simply argues that the Navy should not have proceeded with an award on the basis of initial proposals when it was aware that a better price might be obtained if it conducted a round of discussions and asked for best and final offers.

Much of the Navy's report to our Office is devoted to a discussion of the late modifications to proposal rules and an explanation of why, under them, Microphor's price reduction could not be considered for award, an understandable emphasis since Microphor's initial letter of protest could be read as

raising that issue and its argument was not really sharpened until it responded to the Navy's report. Beyond that, however, the Navy argued that its award on the basis of initial proposals was legally proper and to do otherwise would not be conducive to an orderly procurement process. We agree.

As a general rule, a contracting agency may make an award without holding discussions or requesting best and final offers, provided that (1) the solicitation advises offerors of this possibility, and (2) there has been adequate competition to clearly demonstrate that the award will result in the lowest overall cost to the government at a fair and reasonable price. Wilson Concepts of Florida, Inc., B-224485, Nov. 14, 1986, 86-2 C.P.D. ¶ 561; FAR, 48 C.F.R. § 15.610(a) (1986). All these circumstances were present in the Navy's award of the contract to G-H, as the technically acceptable offeror whose price, the lowest received in competition, was determined to be fair and reasonable. The award to G-H was therefore legally unobjectionable.

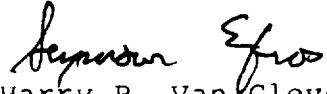
There may be circumstances where an offered price reduction, although late, so closely follows the receipt of initial offers and would confer such a substantial benefit to the government that it would be tantamount to an abuse of discretion not to ask for best and final offers in order to take advantage of it. This is not, we believe, such a case. - Against the 7.5 percent cost saving which may be represented by the protester's offered price reduction must be weighed other considerations.

First, although we have no reason to doubt the good faith of the protester's assertions concerning the manufacturing economies it is able to achieve, it must be recognized that a "late modification" by a second-low offeror transmitted weeks after initial proposals have been received legally cannot be accepted and has no effect. The sender has taken no risk but has everything to gain if the receipt of the "late modification" stimulates a request for best and final offers as a result of which the anticipated savings may, or may not, be realized depending on what revised offers actually are made at that time.

Second, and perhaps more importantly, it must be kept in mind that the government has an interest in the timely award of a contract leading to the supply of the goods and services it is seeking to procure. Here, a competition was held in which the protester participated but did not win because another, technically acceptable firm offered a lower price which was determined to be fair and reasonable. Over a month after that competition was held, the protester asserted that its situation had changed and that it then could offer a lower

price. At some point, however, the procurement process must end and the government must proceed with a contract. We do not think the Navy abused its discretion in proceeding with an award to G-H.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel